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Electronically Filed January 24, 2014

8 **UNITED STATES BANKRUPTCY COURT**

9 **DISTRICT OF NEVADA**

10 In re

11 MARTIFER SOLAR USA, INC., a  
12 California corporation,

13 Debtor.

Case No. BK-S-14-10357-abl

Chapter 11

14 **EX PARTE APPLICATION FOR ORDER**  
15 **SHORTENING TIME FOR HEARING ON**  
16 **DEBTOR'S EMERGENCY FIRST DAY**  
17 **MOTIONS AND LIMITING NOTICE**  
18 **THEREOF**

19 Martifer Solar USA, Inc. ("Debtor"), debtor and debtor in possession in the above-captioned  
20 case (the "Chapter 11 Case"), hereby submits this Ex Parte Application For Order Shortening Time For  
21 Hearing (the "Application") on Debtor's Emergency First Day Motions (as defined herein).<sup>1</sup>

22 Specifically, Debtor has filed the following emergency first day motions (collectively, the  
23 "Emergency First Day Motions");

- 24 1. *Motion for Order Pursuant to 11 U.S.C. § 364 and Fed. R. Bankr. P.*  
25 *4001(c): (I) Authorizing Debtor to Obtain Post-Petition Financing; and (II)*  
26 *Granting Related Relief (the "Motion for Post-Petition Financing")*; and

27 <sup>1</sup> Debtor filed motions [Dkt ##9, 10, 11, 14 and 24] on January 22, 2014 and January 23, 2014,  
28 which are also comprised within the definition of Emergency First Day Motions.

2. *Motion for Order Establishing Certain Case Management, Notice and Administrative Procedures* (“Case Management Procedures Motion”).

The Emergency First Day Motions are based on the *Omnibus Declaration of Klaus Bernhart in Support of Debtor’s First Day Motions* [Dkt #15] and the *Supplemental Omnibus Declaration of Klaus Bernhart in Support of Debtor’s First Day Motions* (together, the “Omnibus Declaration”). Additional information on Debtor and the events leading up to this Chapter 11 Case are set forth therein.

By this Application, Debtor respectfully requests that the Court enter an order: (i) setting an emergency hearing on the Emergency First Day Motions on or before January 28, 2014 (the “Emergency First Day Hearing”), (ii) directing Debtor to serve notice of the Emergency First Day Hearing in accordance with the procedure set forth in section III below; (iii) approving the form and scope of notice of the Emergency First Day Motions described in section III below and providing that no other notice of the Emergency First Day Motions need be given under the circumstances.

This Application is made and based upon Bankruptcy Rule 9006 and Local Rule 9006, the following points and authorities, the Declaration of Micaela Rustia Moore contained herein, the Attorney Information Sheet filed contemporaneously herewith, and the papers and pleadings on file herein, judicial notice of which is respectfully requested.

WHEREFORE, for the reasons set forth herein, Debtor respectfully requests that the Court hear the Emergency First Day Motions on an order shortening time, and grant such other and further relief as may be just and proper.

DATED this 24th day of January 2014.

**FOX ROTHSCHILD LLP**

By: /s/Micaela Rustia Moore

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1 **II.**

2 **LEGAL ARGUMENT**

3 **A. The Relief Is Authorized by Rule 9006 and Meets Due Process Requirements.**

4 Bankruptcy Rules 9006(c)(1) and (d) authorize a court to reduce the time for a hearing, and a  
5 party to file an ex parte motion to shorten the time for a hearing. Bankruptcy Rule 9006(c)(1) provides  
6 in relevant part:

7 In General. Except as provided in paragraph (2) of this subdivision,  
8 when an act is required or allowed to be done at or within a specified  
9 time by these rules or by a notice given thereunder or by order of court,  
the court for cause shown may in its discretion with or without motion or  
notice order the period reduced.

10 Fed. R. Bankr. P. 9006(c)(1).

11 Courts have generally acknowledged that such expedited relief does not violate due process  
12 rights, *even if the motion to shorten time is made ex parte*. Bankruptcy Rule 9006(c)(1) (emphasis  
13 added). “Bankruptcy Rule 9006(c) permits the bankruptcy court ‘for cause shown’ in its discretion,  
14 with or without motion or notice, to reduce the notice period, and ex parte motions for material  
15 reductions in the notice period are routinely granted by bankruptcy courts.” Hester v. NCNB Texas  
16 Nat’l Bank (In re Hester), 899 F.2d 361, 364 n. 3 (5th Cir.1990); see also 9 Collier on Bankruptcy  
17 9006.07 (Lawrence P. King ed., 15th ed. 1995). See, e.g. In re Gledhill, 76 F.3d 1070 (10th Cir.[Utah]  
18 1996).

19 The Court’s decision to reduce the notice period under Bankruptcy Rule 9006 will allow  
20 Debtor (a) to seek authorization for postpetition financing in order to provide funding and liquidity for  
21 the ongoing operation of Debtor’s business and to fund the expenses of the Chapter 11 Case, and (b)  
22 Debtors seek to establish certain case management, notice and administrative procedures to facilitate  
23 the efficient administration of the Chapter 11 Case. Accordingly, Debtor believes it is appropriate that  
24 the Emergency First Day Motions be heard on an order shortening time.

25 **Counsel Has Conferred With the Notice Parties.**

26 Prior to filing the Emergency First Day Motions, counsel consulted the Notice Parties as shown  
27 on the Attorney Information Sheet For Proposed Order Shortening Time, filed concurrently herewith  
28 and incorporated by reference herein.

1 **III.**

2 **NOTICE**

3 **A. Notice of Emergency First Day Hearing.**

4 Upon the Court's entry of an order approving this Application, Debtor will serve the (i) Debtor's  
5 20 largest unsecured creditors; (ii) Debtor's secured creditors; (iii) the Office of the United States  
6 Trustee for the District of Nevada; (iv) the federal and state governmental units required by Local  
7 Bankruptcy Rule 2002(a)(6); and (v) those parties that have filed a request for special notice in this case  
8 (the "Notice Parties") with notice of the Emergency First Day Hearing by facsimile, electronic mail or  
9 overnight mail.

10 **B. The Emergency First Day Motions.**

11 Debtor will serve the Emergency First Day Motions and the Supplemental Omnibus Declaration  
12 as follows:

13 1. All Emergency First Day Motions are being served via overnight mail, facsimile or  
14 electronic mail on: (i) Debtor's 20 largest unsecured creditors; (ii) Debtor's secured creditors; (iii) the  
15 Office of the United States Trustee for the District of Nevada; (iv) the federal and state governmental  
16 units required by Local Bankruptcy Rule 2002(a)(6); and (v) those parties that have filed a request for  
17 special notice in this case.

18 2. Debtor submits that such notice is adequate and appropriate under the circumstances and  
19 that no other or further notice of the Emergency First Day Motions and the Emergency First Day  
20 Hearing need be given.

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IV.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, Debtor respectfully requests that the Court hear the Emergency First Day Motions on an order shortening time, and grant such other and further relief as may be just and proper.

DATED this 24th day of January 2014.

FOX ROTHSCHILD LLP

By: /s/Micaela Rustia Moore

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**EXHIBIT A**

**DECLARATION AFFIRMING REQUESTED RELIEF**

I, Micaela Rustia Moore, declare under penalty of perjury that I am competent to make this declaration under the laws of the United States and the State of Nevada; that I have read the above Ex Parte Application for an Order Shortening Time and that the facts stated therein are true and correct to the best of my knowledge and belief.

DATED this 24th day of January, 2014.

By s/ Micaela Rustia Moore  
MICAELA RUSTIA MOORE

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